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VOLUME 1

CASES AND MATERIALS ON REMEDIES

prepared by

S.M. WADDAMS

[based on an earlier edition by R.J. Sharpe]

1983/84

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UNIVERSITY OF TORONTO

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REMEDIES

TABLE OF CONTENTS

		Page
Introduction		
I	INJUNCTIONS	1
	Judicature Act	1
(a)	Interlocutory Injunctions	2
	(i) Types of Interlocutory orders: Century Engineering Co. v. Greto et al.	2
	(ii) Principles Governing the Granting of Interlocutory Injunctions: Terra Communications Ltd. et al. v. Communicomp Data Ltd. et al.	3
	Salada Foods v. W. K. Buckley	12
	Dodd v. Amalgamated Marine Workers' Union	14
	Woodford v. Smith	15
	(iii) Irreparable Harm	16
	The Attorney-General v. Hallett	17
	(iv) Undertaking as to Damages: Vieweger Construction Co. Ltd. v. Rush & Tompkins Construction Ltd.	18
	Wm. Halliday Contracting Co. Ltd. v. Nicols et al.	20
	Upper Canada College v. City of Toronto	22
	F. Hoffman - La Roche & Co. A.G. v. Secretary of State for Trade and Industry	24
	(v) The Requirement for a "Prima Facie" Case:	25
	American Cynamid Co. v. Ethicon Ltd.	25
	Toronto Marlboros v. Tonelli	31
	Yule v. Atlantic Pizza Delight Franchise	32
	Fellowes & Son v. Fisher	38
	Cantol v. Brodi Chemicals	47
	N.W.L. Ltd. v. Woods	48
	Bruce, "The New Injunction Game"	49
	(vi) Interlocutory Injunctions in Labour Disputes	51
	Texpack Ltd. v. Rowley	54
	Ford Motor Co. of Canada Ltd. v. McDermott	57
	Alex Henry & Sons Ltd. v. Gale et al.	61
	Consolidated-Bathurst Packaging Ltd. v. Canadian Paper Workers Union Local 595 et al.	64

(vii)	Interlocutory Injunctions in Defamation Actions	68
	Blackstone Commentaries Book IV	68
	Bonnard v. Perryman	69
	Canada Metal Co. Ltd. et al. v. Canadian Broadcasting Corp. et al.	72
	Canada Metal Co. Ltd. et al. v. Canadian Broadcasting Corp. et al.	78
	Canada Metal Co. Ltd. et al. v. Canadian Broadcasting Corp. et al.	80
	Canada Metal Co. Ltd. et al. v. Canadian Broadcasting Corp. et al.	81
	A.G. v. Times Newspapers	82
	Miller, Contempt of Court	85
	Schering Chemicals Ltd. v. Falkman Ltd. and others	93
(viii)	Interlocutory Injunctions to Restrain Disposition of Assets Pending Trial	100
	Mareva Compania Naviera S.A. v. International Bulkcarriers S.A.	100
	Rahman (Prince Abdul) Bin Turki Al Sudairy v. Abu-Taha and another	102
	Third Chandris Shipping Corp. et al. v. Unimarine S.A.	105
	Z. Ltd. v. A.-Z. and AA-LL	105
	Trustee of W. Brenner & Co. Ltd. v. Brenner	117
	Mageau v. Mageau	118
	Campbell v. Campbell	119
	Robert Reiser & Co., Inc. v. Nadore Food Processing Equipment Ltd. et al.	119
	Chitel v. Rothbrat	120
	Feigelman v. Aetna Financial Services	133
(ix)	The "Anton Piller" Injunction	145
	Anton Piller K.G. v. Manufacturing Processes Ltd. et al.	145
	Yousif v. Salama	148
	Rank Film Ltd. v. Video Information Centre	150
	West Mercia Constabulary v. Wagner and Others	153
	Bardeau Ltd. v. Crown Food Services Equipment Ltd.	156
	Hayhurst, "The Anton Piller Order"	157
(x)	Injunctions to Restrain the Commission of a Crime	158
	Attorney-General for Ontario v. Grabarchuk et al.	158

	Attorney-General for Ontario v. Garbarchuk et al.	160
	Attorney-General for Ontario v. Yeotes et al.	163
	Attorney-General for Ontario v. Harry et al.	163
	Attorney-General for Ontario v. Canadian Union of Public Employees	165
	Re Regina and Odeon Morton Theatres Ltd. et al.	167
	Kent District v. Storgoff et al. and Attorney General for British Columbia	168
	Gouriet v. U.P.W.	172
	Ex parte Island Records Ltd. and Others	187
(b)	Permanent Injunctions	200
(i)	Quia Timet	200
	Fletcher v. Bealey	200
	Leeds Industrial Co-operative Society v. Slack	204
	Hooper v. Rogers	205
(ii)	Mandatory Injunctions	207
	Redland Bricks Ltd. v. Morris	207
	Vane v. Barnard	211
	Gross v. Wright	212
	City of Hamilton v. Hamilton Street R.W. Co.	215
	Wrotham Park Estate Co. Ltd. v. Parkside Homes Ltd.	216
	Arbutus Park Estates Ltd. v. Fuller	221
	Shepherd Homes Ltd. v. Sandham	222
(iii)	Injunctions Relating to Trespass and Nuisance	226
	(a) Trespass	226
	Goodson v. Richardson	226
	Woollerton and Wilson Ltd. v. Richard Constain Ltd.	229
	Charrington v. Simons & Co. Ltd.	232
	John Trenberth Ltd. v. National Westminster Bank Ltd. and Another	234
	Bertram v. Builders' Association of North Winnipeg	236
	(b) Nuisance	238
	Ogus & Richardson "Economics and the Environment: A Study of Private Nuisance"	238
	Colls v. Home & Colonist Stores Ltd.	244
	Isenberg v. East India House Estate Co. Ltd.	245
	Shelfer v. City of London Electric Lighting Co.	247

		Canada Paper Co. v. A.J. Brown	250
		Chadwick v. City of Toronto	254
		Black v. Canadian Copper	254
		Bottom v. Ontario Leaf Tobacco Co. Ltd.	255
		K.V.P. Company Ltd. v. McKie	255
		An Act respecting the K.V.P. Co.Ltd.	258
		Boomer v. Atlantic Cement Co. Inc.	259
		Miller et al. v. Jackson et al.	263
		Kennaway v. Thompson	269
		Spur Industries Inc. v. Del E. Webb Development	273
		Problem	278
		Draft revised Judicature Act	279
II	SPECIFIC PERFORMANCE		280
	(i)	Introduction	280
	(ii)	Damages, Mitigation and Specific Performance	281
		Robinson v. Harman	281
		Asamera Oil Corp. Ltd. v. Sea Oil & General Corp. et al; Bank Corp., N.V. v. Brook	281
		Problem	294
		Dodd Properties v. Canterbury City Council	295
		Perry v. Sidney Phillips & Sons	301
		Posner, Economic Analysis of Law	304
		Radford v. DeFroberville	307
		Groves v. John Wunder Co.	313
		Miles v. Marshall	316
		Dewees v. Morrow	317
VOLUME 2		C.R. Taylor v. Hepworths Ltd.	319
	(iii)	Equitable Damages	326
		Wroth v. Tyler	326
		Metropolitan Trust Co. of Canada v. Pressure Concrete Ltd.	334
		Johnson v. Agnew	337
		Problem	343
		306793 Ontario Ltd. in Trust v. Rimes	344

(iv)	Injunction to Restrain Breach of Contract	349
	Fothergill v. Rowland	349
	Doherty v. Allman	352
	Sharp v. Harrison	354
	Texaco Ltd. v. Mulberry Filling Station Ltd.	354
	Lumley v. Wagner	355
	Donnell v. Bennett	359
	Metropolitan Electric Supply Co. Ltd. v. Ginder	361
	Toronto Type Foundry Co. Ltd. v. Leach	364
	Sky Petroleum v. V.I.P. Petroleum	366
	Detroit Football Co. v. Dublinski	368
	Elsley v. J.G. Collins Ins. Agencies Ltd.	377
(v)	Party Stipulation for Specific Relief	378
	Warner Bros. v. Nelson	378
(vi)	Liquidated Damages	379
	H.F. Clarke Ltd. v. Thermidaire Corp. Ltd.	379
	Elsley v. J.G. Collins Ins. Agencies Ltd.	387
(vii)	Contracts for the Purchase and Sale of Chattels	392
	Dominion Iron & Steel Co. v. Dominion Coal Co.	392
	Farwell v. Wallbridge	396
	Ontario Law Reform Commission, Report on Sale of Goods	397
(viii)	Contracts for the Purchase and Sale of Land	403
(ix)	Contracts Requiring Continuing Supervision	406
	Wilson v. Furness Railway Co.	407
	Tanenbaum v. W.J. Bell Paper Co.	408
	G.H. Giles & Co. v. Morris	412
	Hill v. C.A. Parsons & Co. Ltd.	413
	Note: The Problem of Supervision	421
(x)	Discretionary Defences	423
	McCorkell v. McFarlane	423
	Hope v. Walter	425
(xi)	Timing of the Action and Election of Remedies	427
	Kloepfer Wholesale Hardware and Automotive Ltd. v. Roy	427
	Macnaughton v. Stone	429

	Dobson v. Winton & Robbins Ltd.	432
	Problem	437
III	AWARDS MEASURED BY BENEFIT TO DEFENDANT	438
	Street, Principles of the Law of Damages	438
	Copyright Act	443
	United Australia Ltd. v. Barclays Bank Ltd.	444
	Phillips v. Homfray	450
	Whitwham v. Westminster Brymbo Coal & Coke Co.	453
	Mahesan v. Malaysia Housing Society	454
	Strand Electric & Engineering Co. Ltd. v. Brisford Entertainments Ltd.	457
	Peter Pan Manufacturing Corporation v. Corsets Silhouette, Ltd.	459
	Seager v. Copydex Ltd.	461
	Townsview Properties Ltd. v. Sun Construction & Equipment Co. Ltd.	462
	Rookes v. Barnard	463
	Broome v. Cassell	463
IV	DAMAGES FOR PERSONAL INJURIES	465
(a)	Periodic Payments and Non-Pecuniary Loss	465
	Andrews v. Grand & Toy Alberta Ltd.	465
	Lim Poh Choo v. Camden and Islington Area Health Authority	479
	Committee on Tort Compensation - Extracts from Report	489
(b)	Assessment of Pecuniary Loss	505
	Lewis v. Todd	505
	Lindal v. Lindal	513
	The Queen v. Jennings	520
	Pickett v. British Rail Engineering Ltd.	525
	Donnelly v. Joyce	529
	Daly v. General Steam Navigation Co. Ltd.	533
(c)	Collateral Benefits	536
	Parry v. Cleaver	536
	Boarelli v. Flannigan	539
	Guy v. Trizec Equities Ltd.	547
	Jack Cewe Ltd. v. Jorgenson	551
(d)	Wrongful Death and Third Party Losses	554
	Keizer v. Hanna	554

	Family Law Reform Act (Ontario) 1978	559
	Zik v. High	561
	Mason v. Peters	563
(e)	Action by the Estate	571
	Trustee Act (Ontario)	571
	Gammell v. Wilson	571
(f)	Mental Distress on Breach of Contract	576
	Jarvis v. Swans Tours Ltd.	576
	Pilon v. Peugeot Canada Ltd.	579
	Brown v. Waterloo Regional Board of Commissioners	583
V	COMPENSATION FOR LOSS OF MONEY	593
(a)	Damages and Inflation	593
	Leitch Transport Ltd. v. Neonex International Ltd.	593
(b)	Prejudgment Interest	599
	Judicature Act (Ontario)	599
(c)	Foreign Currency Obligations	600
	Miliangos v. George Frank (Textiles) Ltd.	600
	Clinton v. Ford	613
VI.	EXEMPLARY DAMAGES	614
	Cassell & Co. Ltd. v. Broome	614
	H.L. Weiss Forwarding Ltd. v. Omnus	619
	Brown v. Waterloo Regional Board of Commissioners of Police	621
VII	LOSS OF USE OF PROPERTY	626
(a)	Decline in Value	626
	Wertheim v. Chicoutimi Pulp Company	626
	Brandeis Goldschmidt & Co. Ltd. v. Western Transport Ltd.	629
(b)	Non Profit-Making Chattels	631
	The Mediana	631
VIII	EVENTS OCCURRING AFTER THE WRONG	634
	Baker v. Willoughby	634
	Jobling v. Associated Dairies Ltd.	637
	Dormuth v. Untereiner	639
	Mercer v. Sijan	642

IX	REMOTENESS	644
	H. Parsons (Livestock) Ltd. v. Uttley Ingham & Co.Ltd.	644
	Kienzle v. Stringer	648
X	MITIGATION	651
(a)	Provocation in Intentional Torts	651
	Landry v. Patterson	651
(b)	Valuation of Chance of Avoiding Loss	654
	Ippolito v. Janiak	654
(c)	Anticipatory Breach	662
	Sells v. Thomson	662
	Finelli v. Dee	663
(d)	Avoided Loss	664
	Erie County Natural Gas and Fuel Company v. Carroll	664
	Cockburn v. Trusts & Guarantee Co.	667
	Jamal v. Moolla Dawood Sons & Co.	668
	Campbell Mostyn (Provisions) Ltd. v. Barnett Trading Co.	671
	Slater v. Hoyle & Smith Ltd.	673
	Ontario Law Reform Commission Report on Sales of Goods (1979)	675

INTRODUCTION

This course explores the middle ground between procedure, on the one hand, and substantive law, on the other. If we take procedure to refer to society's mechanisms for the resolution of disputes, ultimately the mechanics of litigation, and substantive law to be the definition of rights between individuals in their relations with each other and the state, then remedial law refers to the techniques available for the translation of substantive rights into concrete or practical terms.

Remedial choices may be roughly classified as being constitutive, substitutionary, or specific.

A constitutive remedy is one which itself declares a certain state of affairs or status. It requires no further implementation: the very fact of the judgment itself produces the desired remedy. An example is a decree of divorce.

The usual remedy in our tradition is substitutionary: damages. The object of an award of damages is to put the party complaining, so far as it can be done by money, in the position he would have occupied if the wrong had not been done.

In certain circumstances, generally where damages are an inadequate remedy, specific relief is available. A specific remedy is one that gives the plaintiff the very thing he bargained for, restores property or rights to the state existing before the defendant's wrongful invasion, or protects the plaintiff's position from threatened harm.

Before the Judicature Act, damages were awarded by the courts of law, and specific remedies by the court of equity. A hundred years later a full integration between the two sets of remedies is still to be achieved.